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**IN THE
COURT OF APPEALS OF INDIANA**

JASON PFLEDDERER,
Appellant-Defendant,

VS.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 50A03-0603-CR-133

APPEAL FROM THE MARSHALL SUPERIOR COURT
The Honorable Robert O. Bowen, Judge
Cause No. 50D01-0401-FA-1

October 20, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Jason Pfledderer filed a belated direct appeal of the sentence imposed pursuant to a plea agreement in Marshall County. As Pfledderer's appeal is an attack on the guilty plea and not just his sentence, it is more appropriately resolved in a post-conviction relief proceeding. We accordingly dismiss Pfledderer's direct appeal so Pfledderer may petition for post-conviction relief.

FACTS AND PROCEDURAL HISTORY

This convoluted tale began on January 16, 2004, when Pfledderer was charged in Marshall County with dealing in methamphetamine, a Class A felony;¹ possession of methamphetamine, a Class C felony;² and maintaining a common nuisance, a Class D felony.³ Pfledderer entered into a plea agreement on December 8, 2004. In exchange for his plea of guilty to dealing in methamphetamine as a Class B felony, the State dismissed the other charges pending against him in Marshall County. The plea agreement provided Pfledderer would be sentenced to twenty years, with twelve suspended and one year probation. His sentence was to be served concurrently with any sentence he would receive for acts in Kosciusko or St. Joseph counties. The trial court accepted the plea agreement and sentenced him on December 9, 2004.

On January 19, 2005, Pfledderer's St. Joseph County attorney wrote his Marshall County attorney noting a potential problem with the Marshall County plea agreement.

Two problems have arisen in attempting to resolve the case here. First is that any sentence in the case here would have to be consecutive to the Marshall County sentence under IC 35-50-1-2(d). He had been arrested

¹ Ind. Code § 35-48-4-1(a)(2).

² Ind. Code § 35-48-4-6(a).

³ Ind. Code § 35-48-4-13(b)(2).

in January 2004, in 04FA1 and released when he was charged in the St. Joseph County case. The second problem has arisen from the plea offer the State has made and from which they are not budging. They are willing to cap any sentence at the presumptive 4 years and make no argument on the sentence imposed EXCEPT that it has to be consecutive to the Marshall County sentence. Instead of the 8 years, do 4, that Mr. Pfladderer anticipated, he is likely to get 8 plus 4, do 6.

The purpose of this letter is to ask if the agreement in Marshall County could be reopened with some additional time suspended, perhaps 14 suspended from the 20 leaving 6 to serve consecutive to the anticipated 4 here in St. Joseph County. It would result in an aggregate executed sentence of 10 years instead of the expected 8, but he may reluctantly accept such an outcome.

(App. at 92-93.)⁴

Pfladderer also wrote Judge Robert Bowen, who presided over the Marshall County case, asking about the possibility of a sentence modification. Judge Bowen recommended Pfladderer contact an attorney of his own choosing to answer his questions.

On August 5, 2005, Pfladderer again contacted Judge Bowen, asking for an amendment of his plea bargain. Judge Bowen responded: “It is my understanding that you were sentenced in St. Joseph County after you were sentenced in Marshall County. If St. Joseph County ordered their sentence to run concurrent with ours and it is not, your

⁴ Pfladderer’s Appendix includes a number of documents with no apparent direct relevance to the trial court error he alleges. We remind counsel that an appellant’s appendix in a criminal appeal: shall contain a table of contents and copies of the following documents, if they exist:

* * * *

(d) any other short excerpts from the Record on Appeal, in chronological order, such as pertinent pictures or brief portions of the Transcript, *that are important to a consideration of the issues raised on appeal*;

(e) any record material *relied on in the brief* unless the material is already included in the Transcript

Ind. Appellate R. 50(B) (emphasis supplied).

avenue is to go through St. Joseph County.” (*Id.* at 103.) Pfledderer apparently followed Judge Bowen’s recommendation, as the Appendix includes this letter from St. Joseph Superior Court Judge R. W. Chamblee:

I was advised by the Probation Department that you were arrested on the charge arising out of Marshall County on or about April 22, 2004 and posted bond in that case on May 13, 2004. The charge for which I sentenced you here in St. Joseph County occurred July 8, 2004 while you were on bond in the Marshall County case.

According to the law, my sentence must be ordered consecutive to the sentence entered by Judge Bowen because you were on bond in his case when you committed the crime in St. Joseph County. Though I note that the presentence report in my case referred to the fact that the Marshall County sentence was ordered concurrent to any sentence imposed in St. Joseph County, a concurrent sentence is not legally appropriate. If you have any complaint regarding the fact that my sentence is consecutive, you will have to raise that complaint through the appropriate means with the Marshall County Court system.

(*Id.* at 116.)

Pfledderer then prepared and filed in Marshall County a *pro se* “VERIFIED MOTION FOR MODIFICATION OF SENTENCE.” (*Id.* at 107.) Judge Bowen denied that motion on January 3, 2006. Pfledderer then wrote Judge Bowen asking for a “public lawyer in this matter to file a belated appeal *Kling v. State* Cite as 837 N.E.2d 502 (Ind. 2005).” (*Id.* at 129.) Judge Bowen appointed counsel on January 26, 2006, and on February 23, 2006, a motion for leave to file a belated appeal was filed on Pfledderer’s behalf. That motion was granted on February 24, 2006.

DISCUSSION AND DECISION

Pfledderer asks on direct appeal that we:

Reverse his sentence and remand to the trial court for further sentencing proceedings. While Pfledderer can only seek reversal of his

sentence in this direct appeal, the sentencing proceedings on remand, by necessity, must include either rejection or amendment of Pfledderer's plea agreement, given that the plea agreement calls for an illegal sentence and Pfledderer has not yet agreed to any alternative sentence.

(Br. of Appellant at 13.)

The State argues Pfledderer is not entitled to relief on direct appeal, as his "challenge to the sentencing provision that was a part of his guilty plea is a challenge to the validity of the guilty plea." (Br. of Appellee at 3.) The State is correct. A guilty plea may not be challenged by a motion to correct error or a direct appeal; the defendant must instead petition for post-conviction relief. *Huffman v. State*, 822 N.E.2d 656, 658 (Ind. Ct. App. 2005).

Pfledderer's complaint implicates the sentence he received in St. Joseph County as well as the sentence imposed pursuant to his Marshall County plea agreement. His situation can be more appropriately resolved in a post-conviction relief proceeding, not only because this belated appeal challenges the validity of the guilty plea, but also because in a post-conviction relief proceeding evidence can be taken from the attorneys involved in both prior prosecutions.

This appeal is accordingly dismissed so that Pfledderer may petition for post-conviction relief.

Dismissed.

SULLIVAN, J., and BAKER, J., concur.